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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,202	12/21/2001	Jeri L. Callaway	200301965-1	8443
22879	7590	12/02/2009		
HEWLETT-PACKARD COMPANY			EXAMINER	
Intellectual Property Administration			PITARO, RYAN F	
3404 E. Harmony Road			ART UNIT	PAPER NUMBER
Mail Stop 35				2174
FORT COLLINS, CO 80528				
NOTIFICATION DATE		DELIVERY MODE		
12/02/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JERI L. CALLAWAY, WILLIAM CALDWELL CROSSWY and
PHILIP H. DORAGH

Appeal 2009-004530
Application 10/038,202
Technology Center 2100

Decided: November 30, 2009

Before JAY P. LUCAS, THU A. DANG, and JAMES R. HUGHES,
Administrative Patent Judges.

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

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I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 1, 2, 4-22, 24-32, and 44-50. We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We AFFIRM.

A. INVENTION

According to Appellants, the invention “relates a management system and, more particularly, to a management system for managing personal and work-related matters” (Spec. 2, ll. 7-8).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. A device for managing a combination of family-related matters and work-related matters, the device comprising:

a processor;

a calendaring program running on the processor, the calendaring program adapted to provide at least one calendar corresponding to family-related matters, at least one calendar corresponding to work-related matters, and at least one calendar corresponding to a merger of the family-related matters and the work-related matters, the at least one calendar corresponding to the merger of the family-related matters and the work-related matters adapted to display icons that distinguish between the family-related matters and the work-related matters; and

an input/output stage operably coupled to the processor and adapted to communicate with a remote device to update the at least one calendar corresponding to family-related matters and the at least one calendar corresponding to work-related matters.

C. REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Gotou	6,020,828	Feb. 1, 2000
Edwards	2002/0078379 A1	Jun. 20, 2002
Raff	6,785,868 B1	Aug. 31, 2004

Claims 1, 2, 4-6, 8-16, 18-22, 24, and 44-47 stand rejected under 35 U.S.C. § 103(a) over the teachings of Raff in view of Gotou.

Claims 7 and 17 stand rejected under 35 U.S.C. § 103(a) over the teachings of Raff in view of Gotou and Edwards.

Claims 25-32 stand rejected under 35 U.S.C. § 103(a) over the teachings of Raff in view of Edwards.

Claims 48-50 stand rejected under 35 U.S.C. § 103(a) over the teachings of Raff in view of Edwards and Gotou.

II. ISSUE

Have Appellants shown that the Examiner erred in finding that the combination of Raff in view of Gotou teaches or would have suggested “a calendaring program . . . adapted to provide at least one calendar corresponding to family-related matters, at least one calendar corresponding

to work-related matters, and at least one calendar corresponding a merger of the family-related matters and the work-related maters” wherein “the at least one calendar corresponding to the merger of the family-related matters and the work-related matters adapted to display icons that distinguish between the family-related matters and the work-related matters” (claim 1). The issue turns on whether Raff’s calendaring program is “adapted to provide at least one calendar corresponding to family-related matters, at least one calendar corresponding to work-related matters, and at least one calendar corresponding to a merger” (emphasis added) as required by claim 1.

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Raff

1. Raff discloses a calendar database 440 within system 100a which includes shared calendar information 446 and the user’s own calendar information 442, wherein the shared calendar information 446 includes work-related matters while the user’s own calendar information 442 includes family-related matters (col. 10, ll. 33-53; Fig. 10A).
2. The individual calendar information and the shared calendar information are merged together for display 460a (col. 10, l. 64 to col. 11, l. 6; Fig. 10B).

Gotou

3. Gotou discloses using a plurality of icons for display, wherein an icon is used to indicate “office” while another is used to indicate “the user’s home” (col. 2, l. 66 to col. 3, l. 15; Fig. 1).

IV. PRINCIPLES OF LAW

“[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). “Moreover, limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)). Our reviewing court has repeatedly warned against confining the claims to specific embodiments described in the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc).

The term “adapted to” has been interpreted as a mere statement of intended use. *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861, 868 (Fed. Cir. 1985), *overruled by Nobelpharma AB v. Implant Innovations, Inc.*, 141 F.3d 1059 (Fed. Cir. 1998) *on other gnds*.

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007).

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior

art," and discussed circumstances in which a patent might be determined to be obvious. *Id.* at 415 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416. The Court noted that "[c]ommon sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." *Id.* at 420. "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *Id.* at 421.

The Federal Circuit recently recognized that "[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 416). The Federal Circuit relied in part on the fact that Leapfrog had presented no evidence that the inclusion of a reader in the combined device was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Id.* at 1162 (citing *KSR*, 550 U.S. at 418).

V. ANALYSIS

Claims 1, 2, 4-6, 8-16, 18-22, 24, and 44-47

Appellants contend that “the Raff and Gotou references fail to disclose or suggest (1) distinct ‘work-related’ and ‘family-related’ calendars or (2) a merged calendar of ‘work-related matters’ and ‘family-related matters’ where such matters are distinguished by icons” (App. Br. 9). In particular, although Appellants admits that Raff discloses listing “items which arguably constitute ‘work-related matters,’ such as ‘MEETING Q/BOSS,’ as well as items which arguably constitute personal or ‘family-related matters” (*id.* at 10), Appellants contend that “the Raff reference uses the term ‘personal’ to describe matters that pertain to the individual user which may be composed of *both* the individual’s work-related *and* family-related matters” (*id.*). Furthermore, though Appellants admit that “[t]he Gotou reference discloses numerous icons for display on a pager, where the icons signify multiply categories,” Appellants contend that “[t]he Raff reference, however, teaches away from using the Gotou icons to ‘distinguish’ between these two distinct categories of calendar matters” (*id.* at 11).

However, the Examiner finds that “the claims do not specifically state ‘distinct’ calendars as argued by the Appellant[s], but rather a calendar that corresponds to family related matter and work related,” and that “while [Raff’s] calendar may contain information more than just work information, it does contain work related matters which is not prohibited by the current claim language” (Ans. 14). The Examiner also finds that “work and family

related matters are merely headings given to 2 separate calendar[s] and are simply non-functional descriptive material” and that Raff “separates the two calendars with a barrier like the calendar database” (*id.*). The Examiner concludes that it would have been obvious to combine the references to “simply make the sharing more secure” (*id.* at 15).

Thus, the issue we address on appeal is whether the combination of Raff in view of Gotou teaches or would have suggested “a calendaring program... adapted to provide at least one calendar corresponding to family-related matters, at least one calendar corresponding to work-related matters, and at least one calendar corresponding a merger of the family-related matters and the work-related matters” wherein “the at least one calendar corresponding to the merger of the family-related matters and the work-related matters adapted to display icons that distinguish between the family-related matters and the work-related matters” (claim 1). In particular, we address whether Raff’s calendaring program is “adapted to provide at least one calendar corresponding to family-related matters, at least one calendar corresponding to work-related matters, and at least one calendar corresponding to a merger” (emphasis added) as required by claim 1.

We give the claims their broadest reasonable interpretation. *See In re Bigio*, 381 F.3d at 1324. Furthermore, our analysis will not read limitations into the claims from the specification. *See In re Van Geuns*, 988 F.2d at 1184.

Appellants’ claims simply do not place any limitation on what the term “calendar” is to be, is to represent, or is to mean, other than that at least

one calendar corresponds “to work-related matters,” “to family-related matters,” or a “merger” (claim 1). Thus, the calendars cannot be confined to a specific embodiment when the claims do not recite a specific embodiment. Instead, we interpret a “calendar” as a schedule of events.

Furthermore, the terms “work-related” and “family-related” do not change the functionality of, or provide an additional function to, the “calendar” but are merely labels used to describe the calendar. As the Examiner finds, “work and family related matters are merely headings given to 2 separate calendar[s]” (Ans. 14). The language of claim 1 does not distinguish the calendar program providing the calendar “corresponding to work-related matters,” the calendar “corresponding to family-related matters,” and the calendar “corresponding to a merger” from a device providing a schedule of events for a first matter, a schedule of events for a second matter, and a schedule of events of a merger.

In fact, we note that claim 1 does not require that the calendaring program “provides” the various calendars, but merely that the calendaring program “is adapted to provide” the various calendars. The term “adapted to” has been interpreted as a mere statement of intended use. *See Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d at 868. Thus, we interpret claim 1 as merely requiring a calendaring program that is capable of providing various calendars.

Because Appellants agree that Raff discloses providing schedules of events related to “work-related” matters and “family related” matters (App. Br. 10), by arguing that “the Raff and Gotou references fail to disclose or

suggest (1) *distinct* ‘work-related’ and ‘family-related’ calendars or (2) a merged calendar of ‘work-related matters’ and ‘family-related matters’” (App. Br. 9), Appellants appear to be arguing that the applied references fail to disclose *distinctly displayed* “work-related,” “family-related,” and “merged” calendars. However, such apparent argument is not commensurate in scope with the language of claim 1 since claim 1 does not recite any such requirement of a display of the calendars. We agree with the Examiner finding that “the claims do not specifically state ‘distinct’ calendars as argued by the Appellant[s]” (Ans. 14).

Furthermore, although Appellants contend that “the Raff reference uses the term ‘personal’ to describe matters that pertain to the individual user which may be composed of *both* the individual’s work-related *and* family-related matters” (App. Br. 10), Appellants appear to be arguing that a “work-related” calendar has to be a work-related *only* calendar that *does not relate to any other* matter. However, even if such “work-related” and “family-related” terms are not just mere labels used to describe the calendars, such argument is not commensurate in scope with the language of claim 1. That is, claim 1 does not recite any such “only” or “does not relate to any other” matter language. We agree with the Examiner’s finding that claim 1 does not preclude Raff’s calendars which “may contain information more than just work information,” because the calendars “contain work related matters which [are]not prohibited by the current claim language” (Ans. 14).

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Raff discloses a calendar database which includes shared calendar information and the user's own calendar information (FF 1). The skilled artisan would have understood the calendar database to be a calendar program adapted to provide a plurality of schedule of events for a plurality of matters. Thus, we find Raff discloses a calendar program that is adapted to provide a first calendar for a first matter, and a second calendar for second matter. Also, as the Examiner finds, Raff "separates the two calendars with a barrier like the calendar database" (Ans. 14).

Furthermore, Raff discloses that the individual calendar information, which includes family-related matters, and the shared calendar information, which includes work-related matters, are merged together for display (FF 1-2). The skilled artisan would have also understood the calendar database to be adapted for providing a schedule of events that is a merger of the plurality of matters related to work and family. In fact, Appellants admit that the plurality of matters include "work-related" and "family-related" matters (App. Br. 10). Accordingly, we find Raff discloses and thus strongly suggests "work-related" and "family-related" calendars, and a merged calendar of "work-related matters" and "family-related matters," consistent with the requirements of instant claim 1.

Gotou discloses using a different icon to indicate different matters (FF 3). The skilled artisan would have also understood the use of icons of Gotou to be displaying icons that distinguish between the various matters. Accordingly, we agree with the Examiner that Raff in view of Gotou teaches or at the least suggests "a calendaring program... adapted to provide at least

one calendar corresponding to family-related matters, at least one calendar corresponding to work-related matters, and at least one calendar corresponding to a merger of the family-related matters and the work-related matters” wherein “the at least one calendar corresponding to the merger of the family-related matters and the work-related matters adapted to display icons that distinguish between the family-related matters and the work-related matters” (claim 1).

Although Appellants contend that “[t]he Raff reference, however, teaches away from using the Gotou icons to ‘distinguish’ between these two distinct categories of calendar matters” (App. Br. 11), Appellants appear to be arguing that there is no suggestion in Raff to combine the references. However, the Examiner concludes that it would have been obvious to combine the references to “simply make the sharing more secure” (Ans. 15).

We agree with the Examiner. Since Gotou uses icons to distinguish between two distinct categories of matters, we conclude that the application of one known element (using icons to distinguish between matters) with another (the calendar matters of Raff) would have yielded predictable results to one of ordinary skill in the art at the time of the invention. That is, we find that providing icons to distinguish matters as taught by Gotou with calendar matters of Raff is no more than a simple arrangement of old elements, with each performing the same function it had been known to perform, yielding no more than one would expect from such an arrangement. *See KSR*, 550 U.S. at 417.

Appellants have presented no evidence that using Gotou's icons to distinguish the calendar matters of Raff was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Leapfrog*, 485 F.3d at 1162 (citing *KSR*, 550 U.S. at 418-19). Rather, Appellants' claimed invention is simply an arrangement of the well-known teaching of distinguishing matters with icons, with the well-known teaching of different calendar matters. Thus, the combined teachings of the references represent merely a combination of familiar elements according to known methods and do no more than yield predictable results. See *KSR*, 550 U.S. at 416.

Thus, Appellants have neither shown that the Examiner failed to make a prima facie case of obviousness, nor have they persuasively rebutted the Examiner's prima facie case. Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting independent claim 1, independent claim 13 falling therewith, and claims 2, 4-6, 8-12, 14-16, 18-22, 24, and 44-47 depending therefrom, under 35 U.S.C. § 103(a).

Claims 9 and 20

As to claims 9 and 20 depending from claims 1 and 13 respectively, Appellants repeat the argument that "the Raff reference discloses calendars that include *both* work-related and family-related information" (App. Br. 12). As discussed above, we find no shortcomings with respect to the combined teachings of Raff and Gotou.

Further, Appellants' claims simply do not place any limitation on what the term "barrier" is to be, is to represent, or is to mean, other than that

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the barrier is provided “to separate the work-related matters from the family-related matters” (claim 1). We interpret the barrier to be any structure between two separate matters.

As discussed above, Raff discloses a schedule of events (calendar) for a first (work-related) matter that is separate from a second schedule of events for a second (family-related) matter. That is, Raff discloses schedules of events relating to different, and thus separate and distinct, matters. The artisan would have understood Raff to disclose two separate calendars, and thus, a barrier separating the two calendars.

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claims 9 and 20 as unpatentable over Raff and Gotou under 35 U.S.C. § 103(a).

Claim 18

As to claim 18 depending from claim 13, Appellants repeat the argument that “the Raff reference is not concerned with maintaining such privacy” (App. Br. 13). As discussed above, we find no shortcomings with respect to the combined teachings of Raff and Gotou. Also as discussed above, Raff discloses a schedule of events (calendar) for a first (work-related) matter that is separate from a second schedule of events for a second (family-related) matter.

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claim 18 as unpatentable over Raff and Gotou under 35 U.S.C. § 103(a).

Claims 45 and 47

As to claims 45 and 47 depending from claims 1 and 13 respectively, Appellants add the argument that “an abstract rectangle [of Gotou] does not ‘resemble an office building’” (App. Br. 14). As discussed above, we find no shortcomings with respect to the combined teachings of Raff and Gotou. Appellants’ claims simply do not place any limitation on what the term “resembles” is to be, is to represent, or is to mean. The Examiner finds that the icons of Gotou “resemble” a house and office building (Ans. 9). Appellants provide no convincing argument to dispute that the Examiner has correctly shown where the claimed elements appear in Gotou.

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claims 45 and 47 as unpatentable over Raff and Gotou under 35 U.S.C. § 103(a).

Claims 7 and 17

As to claims 7 and 17 respectively depending from claims 1 and 13, Appellants repeat the argument that Raff “teaches away” from combining the references (App. Br. 15). As discussed above, we find no shortcomings with respect to the Examiner’s combining of Raff and of Gotou. We also find no shortcomings with respect to the Examiner’s combining Raff, Gotou and Edwards. That is, Appellants also have presented no evidence that applying the Edwards teaching to that of Raff and Gotou was “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog*, 485 F.3d at 1162.

Accordingly, we find that Appellants have also not shown that the Examiner erred in rejecting claims 7 and 17 as unpatentable over Raff, Gotou and Edwards under 35 U.S.C. § 103(a).

Claims 25-32

As to independent claim 25, Appellants repeat the argument that “the Raff reference does not disclose one calendar for family-related matters and another calendar for work-related matters” (App. Br. 16), and that “the Raff reference would teach away from using a private host computer” (*id.* at 17). As discussed above, we find no shortcomings with respect to the combined teachings of Raff and Edwards. Further, we conclude that the Examiner established a *prima facie* case of obviousness of the claims over the combined teachings of Raff and Edwards.

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting independent claim 25 and claims 26-32 depending therefrom as unpatentable over Raff and Edwards under 35 U.S.C. § 103(a).

Claims 48 and 49

As to claims 48 and 49 depending from claim 25, Appellants repeat the argument that “none of the items on any of the calendars disclosed by Raff are distinguished from one another” (App. Br. 19), and add that “[t]he Gotou reference teaches nothing to obviate this deficiency” (*id.*). However, the Examiner finds that Raff, Edwards and Gotou disclose such features (Ans. 13). We agree with the Examiner that a skilled artisan would have understood that Raff in view of Edwards and Gotou would have suggested

such features. In response, Appellants provide no convincing argument to dispute that the Examiner has correctly shown where the claimed elements appear in Raff and Gotou.

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claims 48 and 49 as unpatentable over Raff, Edwards and Gotou under 35 U.S.C. § 103(a).

Claim 50

As to claim 50 depending from claim 25, Appellants repeat the argument that “an abstract rectangle [of Gotou] does not ‘resemble an office building’” (App. Br. 19). As discussed above, the Examiner finds that the icons of Gotou “resemble” a house and office building (Ans. 9). Appellants provide no convincing argument to dispute that the Examiner has correctly shown where the claimed elements appear in Gotou.

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claim 50 as unpatentable over Raff, Edwards and Gotou under 35 U.S.C. § 103(a).

VI. CONCLUSIONS OF LAW

(1) Appellants have not shown that the Examiner erred in concluding that claims 1, 2, 4-6, 8-16, 18-22, 24, and 44-47 are unpatentable under 35 U.S.C. § 103(a) over the teachings of Raff in view of Gotou.

(2) Appellants have not shown that the Examiner erred in concluding that claims 7 and 17 are unpatentable under 35 U.S.C. § 103(a) over the teachings of Raff in view of Gotou and Edwards.

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(3) Appellants have not shown that the Examiner erred in concluding that claims 25-32 are unpatentable under 35 U.S.C. § 103(a) over the teachings of Raff in view of Edwards.

(4) Appellants have not shown that the Examiner erred in concluding that claims 48-50 are unpatentable under 35 U.S.C. § 103(a) over the teachings of Raff in view of Edwards and Gotou.

(5) Claims 1, 2, 4-22, 24-32, and 44-50 are not patentable.

VII. DECISION

We affirm the Examiner's rejection of claims 1, 2, 4-22, 24-32, and 44-50 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

nhl

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